

BORA LASKIN LAW LIBRARY
3 1761 060986155

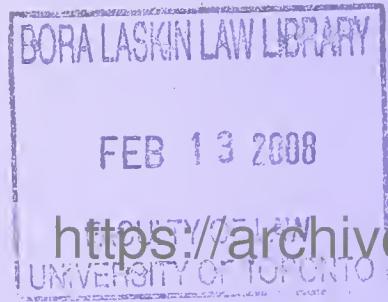
Information Law: Cases and Materials

Volume Two

Professor Lisa M. Austin
Faculty of Law, University of Toronto
Winter 2008

**These materials are reproduced solely for the use of students in the Faculty of Law,
University of Toronto
2007-2008**

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto



https://archive.org/details/informationlawca02aust_2

Information Law: Cases and Materials

Volume Two

Professor Lisa M. Austin
Faculty of Law, University of Toronto
Winter 2008

These materials are reproduced solely for the use of students in the Faculty of Law,
University of Toronto
2007-2008

Information Law: Cases and Materials Volume One

Table of Contents

Part Two: Privacy

A. Introduction

Pamela Samuelson, “The Challenges for Regulating the Global Information Society” in Regulating the Information Society. Ed. Chris Marsden. New York: Routledge, 2000. (Footnotes removed).....	1
Helen Nissenbaum, “Protecting Privacy in an Information Age: The Problem of Privacy in Public” (1998) 17 Law & Phil 559. (Footnotes removed).....	10
Daniel Solove. “Privacy and Power: Computer Databases and Metaphors for Information Privacy”. (2001) 53 Stan. L. Rev. 1393. (Footnotes Removed)	15

B. Charter Protection for Privacy

Introduction

<i>Hunter v. Southam Inc.</i> , [1984] 2 S.C.R. 145	29
<i>R. v. Mills</i> , [1999] 3 S.C.R. 668.....	41
Notes: “Considerable Sympathy”: Privacy and Section 7 of the <i>Charter</i>	52

Departures from *Hunter v. Southam*

<i>Thomson Newspapers Ltd. v. Canada (Director of Investigation and Research, Restrictive Trade Practices Commission)</i> , [1990] 1 S.C.R. 425	55
<i>R. v. Monney</i> , [1999] 1 S.C.R. 652	73

Surveillance

<i>R. v. Wong</i> , [1990] 3 SCR 36.....	84
<i>R. v. Tessling</i> , 2004 SCC 67	98
Department of Justice, Industry Canada, Solicitor General Canada, “Lawful Access—Consultation Document” (August 25, 2002)	112
Public Video Surveillance	121
Toronto Police Service Closed Circuit Television	134
Notes: Biometrics	138

State Information Sharing and Retention

<i>R. v. Arp</i> , [1998] 3 S.C.R. 339.....	140
CUB 44824	147
<i>Smith v. Canada (Attorney General)</i> , 2001 SCC 88.....	167
Opinion by retired Supreme Court Justice Hon. Gerard V. LaForest, C.C., Q.C., re: CCRA Passenger Name Record (footnotes removed).....	168
<i>R. v. Law</i> , 2002 SCC 10.....	179
<i>R. v. Jarvis</i> , 2002 SCC 73	185
Notes:.....	206
1. <i>R. v. Laroche</i> , 2002 SCC 72	206
1. Passenger Protect	206

Third Parties and Information Sharing

<i>R. v. Dyment</i> , [1988] 2 S.C.R. 417	215
<i>R. v. Plant</i> , [1993] 3 S.C.R. 281	227

Notes.....	238
(a) <i>R. v. Tessling</i> , (2003) 63 O.R. (3d) 1	238
(b) Data Preservation and Third Parties.....	238
(c) RFID technology	239
C. Private Law Protection of Privacy	
Prosser, "Privaey".....	241
American Restatement (Second) of Torts – Privacy	255
<i>Dwyer v. American Express Co.</i> , 273 Ill.App.3d 742, 652 N.E.2d 1351	273
<i>Campbell v MGN Ltd</i> , [2004] 2 All ER 995 (UKHL)	278
<i>Aubry v. Éditions Vice-Versa</i> , [1998] 1 S.C.R. 591.....	299
Somwar.....	326
Notes.....	326
1) Tort of Invasion of Privacy in New Zealand.....	326
2) Publicity Rights and Misappropriation of Personality	326
3) Breach of Confidentiality in Canadian Law.....	327
4) Breach of Confidentialtiy and Anonymous Information.....	327
5) Employment Contracts and Confidential Information	328
D. Statutory Protection of Privacy	
OECD Guidelines	330
1. Privacy Act 333	
Personal Information	333
<i>Dagg v. Canada (Minister of Finance)</i> [1997] 2 S.C.R. 403	333
<i>Canada (Information Commissioner) v. Canada (Commissioner of the Royal Canadian Mounted Police)</i> 2003 SCC 8	357
<i>Reporters Committee for Freedom of the Press v. United States Department of Justice</i> , 489 U.S.749 (1989)	362
<i>Canada (Information Commissioner) v. Canada (Minister of Public Works and Government Services) (T.D.)</i> , [1997] 1 F.C. 164	373
Anonymity and the Adverse Drug Reaction Database	378
Notes	389
Census Information.....	389
Access to Personal Information.....	390
<i>Ruby v. Canada (Solicitor General)</i> 2002 SCC 75.....	390
Collection, Use and Disclosure of Personal Information.....	416
<i>Privacy Act (Can.) (Re) (C.A.)</i> [2000] 3 F.C. 82	416
Notes:.....	420
(a) Subsequent Developments in the CCRA database	420
(b) Recent Developments in Government Information-Sharing Practices	423
2. Personal Information and Protection of Electronic Documents Act	
Threshold Questions	
<i>Ferenczy v. MCI Medical Clinics</i> 2004 O.J. No. 1775	428
<i>Rousseau v. Wyndowe</i> , 2006 FC 1312.....	434
PIPEDA Case Summary #340	440
PIPED Act Case Summary #4	444
PIPED Act Case Summary #25	446

PIPED Act Case Summary #99	448
Notes.....	456
(b) Information About Third Parties.....	456
(c) Genetic Information and Third Parties.....	456
Knowledge, Consent and Reasonable Purposes	
PIPED Act Case Summary # 42	458
Current Air Canada Aeroplan Privacy Policy.....	463
<i>Englander v. Telus Communications Inc.</i> , 2004 FCA 387	475
PIPED Act Case Summary #65 (Employer accused of forcing consent to security screening)	494
<i>L'Ecuyer v. Aéroports de Montréal</i> , 2003 FCT 573	496
<i>Eastmond v. Canadian Pacific Railway</i> , 2004 FC 852.....	499
Turner v. Telus Communications Inc., 2005 FC 1601	520
<i>Turner v. Telus Communications Inc.</i> , 2007 FCA 21	535
PIPED Act Case Summary #48 (Applicant for service objects to providing credit card or bank account information).....	544
Notes:.....	546
1) Consent and Employee Privacy: Provincial Legislation	546
2) Video Surveillance Activities in a Public Place	546
Exceptions from Consent	
PIPEDA Case Summary #264 (Video cameras and swipe cards in the workplace).....	547
PIPEDA Case Summary #265 (Video cameras in the workplace).....	550
PIPEDA Case Summary #269 (Employer hires private investigator to conduct video surveillance on employee)	553
Security and Breach Notification	
Report of an Investigation into the Security, Collection and Retention of Personal Information	557
GOVERNMENT RESPONSE TO THE FOURTH REPORT OF THE STANDING COMMITTEE ON ACCESS TO INFORMATION, PRIVACY AND ETHICS (2007)....	569
Cross-Border Issues	
PIPEDA Case Summary #365 (SWIFT)	571
Report of Findings	578
New Challenges: Identity Issues	
Facebook.....	589
Identity and Surveillance	590